

PUBLIC REDACTED VERSION

**STATE OF ILLINOIS
BEFORE THE ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission	:
On its Own Motion	:
	: ICC Docket No. 10-0398
Audit of Just Energy Illinois Corp	:
d/b/a Just Energy d/b/a	:
U.S. Energy Savings Corp.	:

**JUST ENERGY ILLINOIS CORP.’S VERIFIED REPLY
TO THE RESPONSES OF STAFF AND CUB REGARDING
ITS FEBRUARY 14, 2012 COMPLIANCE FILING AND DRAFT PROPOSED ORDER**

Just Energy Illinois Corp. (“Just Energy”), by its counsel DLA Piper LLP (US), pursuant to the April 6, 2012 Ruling of the Administrative Law Judge (“ALJ”), respectfully submits the instant Verified Reply to the February 27, 2012 Response of the Illinois Commerce Commission (“Commission”) Staff (“Staff’s Response”) and the April 20, 2012 Response of the Citizens Utility Board (“CUB’s Response”) to Just Energy’s February 14, 2012 Compliance Filing and Draft Proposed Order.¹

INTRODUCTION

Just Energy has embraced the audit process that is at the heart of the instant proceeding. Having worked hundreds, if not thousands, of hours with the auditor and Staff to provide accurate information to assist with the development of a meaningful audit report, Just Energy

¹ As a preliminary matter, Just Energy notes that Staff’s Response included discussion of issues beyond Just Energy’s Compliance Filing and Draft Proposed Order – for example, Staff also included a motion for leave to respond to Just Energy’s Compliance Filing and a discussion of disclosure to CUB of the confidential version of the “Compliance Audit and Management Assessment of the Business and Sales Practices of Just Energy” (the “Audit Report”) submitted by NorthStar Consulting Group (“NorthStar”) to the Commission on January 3, 2012. (See Staff Response at 1-5.) Those issues are beyond the scope of the instant filing as directed by the ALJ’s April 6, 2012 Ruling; however, by not addressing those issues here, Just Energy is not waiving its rights to make arguments regarding those and related issues in future filings or proceedings.

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appreciates the effort that has been given to address its processes, with the goal of reducing customer complaints. Just Energy has learned much from this process, and has agreed to implement all of the recommendations made by the Auditor. In fact, Just Energy began proactively implementing some audit recommendations before they were even revealed in the final Audit Report based on focus areas of the audit. For the remainder of the recommendations, Just Energy set an implementation start date of February 1, 2012 and is following the suggested implementation timelines in the Audit Report. At the date of this filing, all recommendations in the Audit Report with implementation timelines of one month and three months have been implemented. Even prior to the initiation of the audit process, Just Energy took several proactive steps to improve, among other things, its complaint tracking and monitoring processes and enrollment processes. Customer complaints have dropped significantly as a result of these changes since the Final Order in ICC Docket No. 08-0175 was issued.

Staff makes some sensible recommendations regarding next steps in concluding this matter. For example, Staff recommends that the Commission should suspend the daily complaint reporting by Just Energy in order to permit Just Energy to focus further on implementation of the Audit Report's recommendations. (*See* Staff's Response at 7.) Likewise, Staff suggests a reasonable path for Just Energy to petition the Commission for relief from the monthly complaint reporting and quarterly cancellation reporting requirements imposed in Docket No. 08-0175. (*See id.* at 7-8.) Staff's interpretation and suggested implementation of the "audit remedy" imposed upon Just Energy by the Commission in ICC Docket No. 08-0175 is in some respects inaccurate and contrary to the plain language the Commission has used in its

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Orders. However, Just Energy appreciates many aspects of Staff's approach and is agreeable to many of Staff's suggestions.²

CUB's Response also misinterprets and misapplies the "audit remedy" imposed upon Just Energy. In sharp contrast to Staff, however, CUB continues to exhibit the same overheated rhetoric and a lack of candor that has characterized many CUB filings in the instant proceeding and the underlying proceeding. It appears that CUB harbors an intent to malign Just Energy at every opportunity and to prolong this proceeding at all costs, even though the Audit Report is complete to all parties' satisfaction, and Just Energy has agreed to implement each and every recommendation contained in that Report. CUB is seemingly upset that Just Energy has chosen to follow the path that presumably the Commission would want – by agreeing to implement the Audit Report's recommendations rather than fighting against them. Thus, CUB cherry picks a few items from the very lengthy Audit Report to attack Just Energy and then purports to present plainly untrue "facts" about complaint volumes. Just Energy strongly objects to CUB's approach and CUB's apparent insistence that this case cannot end until CUB says it can end. Respectfully, the Commission ought not countenance such an approach and should not credit the clearly erroneous assertions contained in CUB's unverified Response.

The bottom line is that Just Energy has agreed to implement the Audit Report's recommendations. Nothing in any prior Commission Order required Just Energy to do anything more than that, and indeed permitted Just Energy to contest those recommendations through additional litigation, a course which Just Energy has chosen to forego.

² Appreciating the constructive approach reflected in Staff's Response, Just Energy has sought to engage Staff informally to discuss the parameters of these issues and attempt to reach further definition and resolution. Staff declined Just Energy's invitation to engage in discussions at that time. Nonetheless, Just Energy appreciates many suggestions made in Staff's Response and hopes to further discuss these issues with Staff in the future in an attempt to reach mutually acceptable solutions to bring this matter to a close as expeditiously as possible.

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With regard to timing, Just Energy set a start date of February 1, 2012 that, when applied to the implementation timeframe in the fourth column of Exhibit II-3 of the Audit Report, creates a timeline for implementation of the audit recommendations which Just Energy hereby agrees to follow.³ Implementation is currently proceeding consistent with the Audit Report's timeline and the February 1 start date. Recommendations with implementation schedules of "1 month" and "3 months" have already been completed.

With regard to implementation reporting, Just Energy agrees to provide Staff with periodic progress reports. The most efficient method would be to provide such reports within ten (10) business days after each respective implementation timeframe set forth in the Audit Report, using February 1, 2012 as the starting date for implementation.⁴

What Just Energy is not agreeable to is a seemingly unending process. The Commission ordered an audit – that audit is complete, and Just Energy has agreed to implement its recommendations. Just Energy never foresaw that by agreeing to implement rather than contest the Audit Report's recommendations it would be subjecting itself to further litigation and unfounded accusations from CUB. The point of the audit was to help reduce customer complaints. Contrary to CUB's transparently incorrect attempt to mischaracterize facts, information contained in Commission public reports (which were summarized in Just Energy's

³ Respectfully, any suggestion that the language regarding implementation of the recommendations used by Just Energy in its prior filings was evasive or incomplete is unfounded. In its Compliance Filing, Just Energy stated forthrightly that it agreed to implement all of the Audit Report's recommendations, which was specifically the question at issue for purposes of Just Energy's Compliance Filing. No "start date" for implementation had been set by anyone, but in good faith Just Energy began implementation effective February 1, 2012. In any event, to the extent that there was concern over the timing of that implementation, Just Energy clarifies here that it began implementation on February 1, 2012 and is proceeding with implementation in accordance with the Audit Report's suggested timeline.

⁴ Given that Just Energy is agreeing to implement the Audit Report's recommendations in accordance with the timeline suggested in the Audit Report, the issue of implementing the recommendations in a "prioritized" manner is moot.

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March 14, 2012 Petition for Interlocutory Review, were not rebutted, and are presented again herein) demonstrate that complaints against Just Energy have been substantially reduced. Thus, this matter should be brought to a close as soon as possible.

The relevant Commission Orders set forth specific requirements. Just Energy has met those requirements and is following through with implementation of the Audit Report's recommendations rather than the alternative course of further litigation that was contemplated by those Commission Orders. In the interest of regulatory certainty, where, as here, a party complies with the requirements of Commission Orders, the matter should be concluded.

REPLY TO STAFF'S RESPONSE

1. Suspension Of The Daily Complaint Reporting Requirement

Staff recommends that:

[T]he Commission suspend the daily complaint reporting by the Company in order to allow the Company to use its resources to implement the Audit's recommendations. In Staff's view, the monthly complaint reports are sufficient during this period of implementation because the monthly reports aggregate the daily complaint report information and are sufficiently timely during this period.

(Staff's Response at 7.)

Just Energy appreciates Staff's suggestion on this point. Just Energy agrees that use of additional resources to further implement the Audit Report's recommendations would be a productive and appropriate step. Accordingly, Just Energy agrees with Staff's suggestion to suspend the daily complaint reporting requirement. Just Energy also notes that CUB's Response (which was filed after Staff's Response) does not take issue with Staff's suggestion.

2. Timing For Implementation Of The Audit Report's Recommendations

Staff's Response candidly admits that "neither of the Commission's Orders in Docket No. 08-0175 or in this Docket provide a compliance timeline." (Staff's Response at 6.)

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Accordingly, in submitting its Compliance Filing and Draft Proposed Order, Just Energy did not specify a particular timeline for implementation of the recommendations, and any suggestion by Staff (or CUB) that Just Energy was somehow shirking its responsibility under any Commission Order is unjustified. Just Energy assumed the timelines in the Audit Report recommendations would apply; the only question was the relevant “start” date. In a show of good faith, Just Energy began implementation using a February 1, 2012 start date.⁵

3. Priority Rankings Of The Audit Report’s Recommendations Is Moot

Staff refers to implementation of the Audit Report’s recommendations consistent with the “priority” ranking of each recommendation contained in column two of Exhibit II-3 of the Audit Report. (See Staff’s Response at 6.) The purpose of the “priority” rankings with the recommendations is somewhat unclear. As best Just Energy can tell, the notion of a “priority” ranking on the recommendations in the Audit Report appears to contemplate that Just Energy might resist the implementation of some of the recommendations (as it was permitted to do but has chosen not to), and that the priority ranking would perhaps assist the Commission in determining which of the unfulfilled recommendations are most important. Because Just Energy is agreeing to implement *all* of the Audit Report’s recommendations using the implementation timeline contained in the Audit Report, the priority rankings issue is a moot point.

4. Implementation Plan

Staff suggests that if Just Energy cannot implement the Audit Plan’s recommendations “concurrently” that Just Energy should have to file a pleading explaining why and an action plan to achieve concurrent implementation, to which the parties would have the opportunity to respond. (See Staff’s Response at 6-7.) As an initial matter, it is unclear what is meant by

⁵ The February 1 start date for implementation of the audit recommendations that were not previously implemented actually precedes Just Energy’s compliance filing agreeing to adopt the audit recommendations.

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“concurrent” implementation, since the Audit Report itself recognizes that the recommended timeframe for implementing the recommendations contemplates a range of timeframes for the various recommendations. Further, there is nothing in any Commission Order that supports imposing the obligation of “concurrent” implementation. Indeed, there is nothing in any Commission Order that supports providing parties an opportunity to litigate over any action plan for implementation; it simply was not contemplated in the process set forth by the Commission in its prior Orders.

In any event, this issue is now moot. Just Energy has agreed to implement all of the Audit Report’s recommendations, and is doing so in accordance with the timeframe set forth in the Audit Report. Accordingly, there is no need for any filings relating to an explanation of concurrent implementation of the recommendations or an action plan relating to implementation of the recommendations.

5. Status Reports

Staff suggests that Just Energy be required to submit monthly status reports to Staff regarding Just Energy’s progress in implementing the Audit Report’s recommendations. (*See* Staff’s Response at 7.) Once again, there is nothing in any Commission Order that suggests that Just Energy must take additional steps beyond either (1) contesting some or all of the Audit Report’s recommendations or (2) implementing the uncontested recommendations. Accordingly, there is no valid basis to impose upon Just Energy any requirement to provide Staff with status reports.

In an effort to reach a comprehensive resolution of the issues associated with the instant proceeding, however, Just Energy agrees to provide Staff with periodic progress reports. The most efficient method would be to provide such reports within ten (10) business days after each

respective implementation timeframe set forth in the Audit Report, using February 1, 2012 as the starting date for implementation.

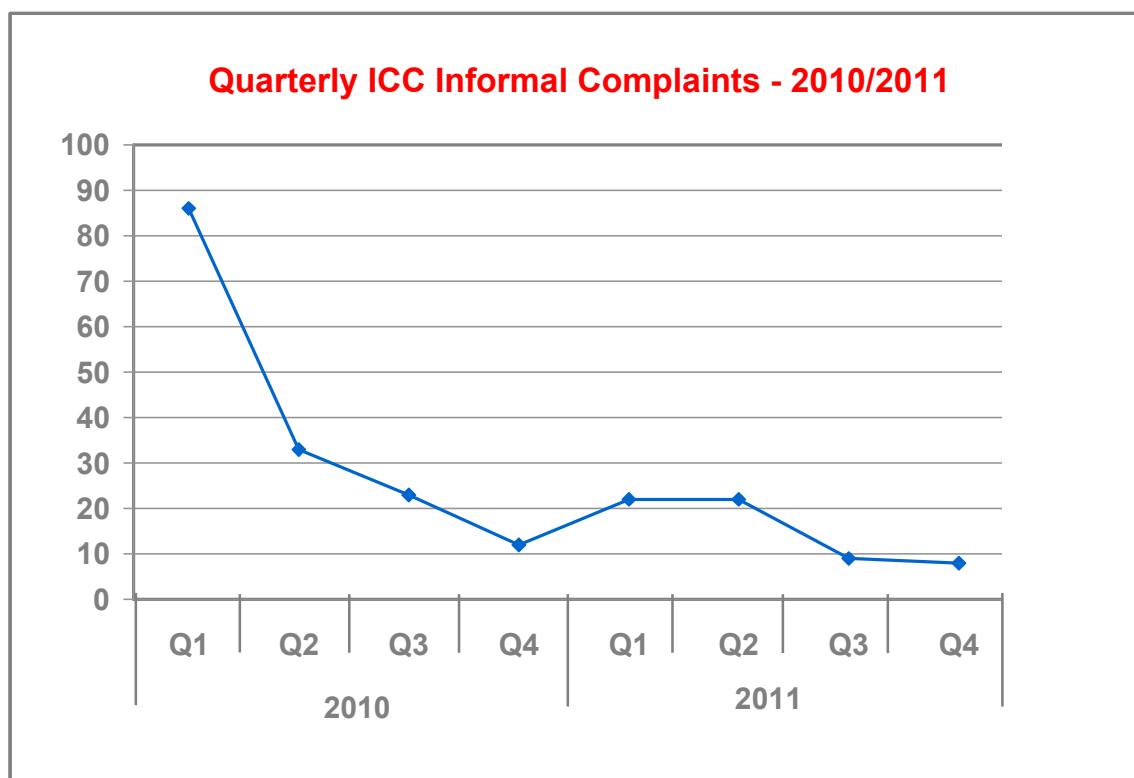
6. Relief From Monthly And Quarterly Reporting

Staff's Response states:

Upon the Company's full compliance with the Audit recommendations and a demonstrated reduction in complaints, Staff recommends that the Commission permit the Company to petition for relief from the monthly complaint reporting and quarterly cancellation reporting required by the Commission in Docket No. 08-0175 to the extent the Company's performance justifies such relief.

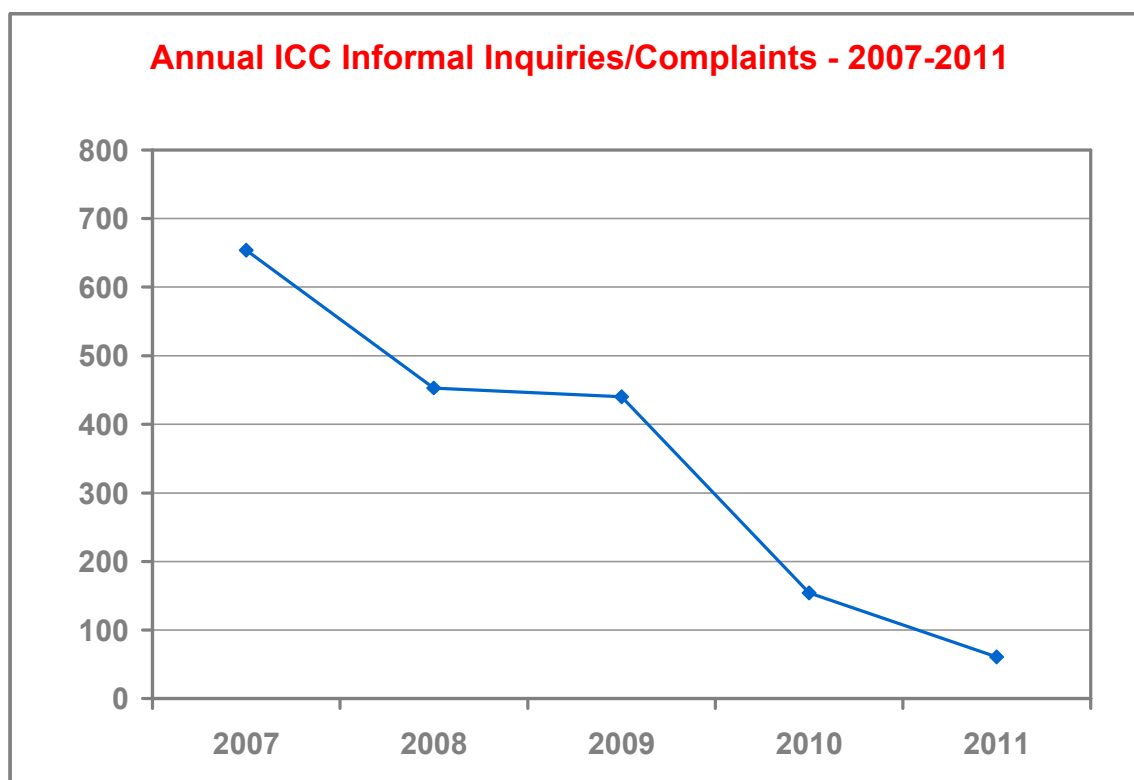
(Staff's Response at 7-8.)

Again, Just Energy appreciates Staff's recommendation and certainly agrees that it should be permitted to be released from the Monthly and Quarterly Reporting requirements once the Audit Report's recommendations are implemented. Staff's other noted factor for such a release – a “demonstrated reduction in complaints” – has already been achieved. Just Energy acknowledges that the overriding goal of the Commission's decision to initiate an audit was to “substantially reduce customer complaints.” (Docket No. 10-0398, June 23, 2010 Initiating Order at 2-3; *see also* Docket No. 08-0175 April 13, 2010 Order at 49.) Just Energy has done just that. The quarterly data on the Commission's website regarding informal customer complaints against Just Energy demonstrate that in 2010 and 2011, the number of complaints against Just Energy dropped precipitously. The chart below summarizes the data in the quarterly reports on the Commission's website found at <http://www.icc.illinois.gov/ags/consumereducation.aspx#s13>:



There has also been a dramatic year-over-year reduction in informal complaints and inquiries registered with the Commission's Consumer Services Division since 2007. In 2007, the Commission received 654 contacts regarding Just Energy. In 2008, the Commission received 453 inquiries. In 2009, the Commission received 440 inquiries. In 2010, the Commission received 154 inquiries, and, finally, in 2011, the Commission received 61 inquiries regarding Just Energy.⁶ The chart below summarizes the annual data:

⁶ The annual data for 2007 through 2010 is contained in the Commission's Consumer Services Division Annual Reports found on the Commission's website at <http://www.icc.illinois.gov/reports/Results.aspx?t=7>. The data for 2011 is contained in the quarterly reports posted on the Commission's web site at <http://www.icc.illinois.gov/ags/consumereducation.aspx#s13>.



The reference to 2007 data is relevant because 2007, nearly a half of a decade ago, is roughly the time period covered by the complaint filed in Docket No. 08-0175. This information demonstrates that Just Energy has, in fact, made impressive strides to do just what the Commission required: “substantially reduce customer complaints.” Those results, combined with the fact that Just Energy has agreed to implementation of the Audit Report’s recommendations demonstrates Just Energy’s good faith in this matter.

7. Staff’s Response To Just Energy’s Draft Proposed Order

Respectfully, Staff’s statements regarding Just Energy’s Draft Proposed Order are somewhat perplexing. Staff’s Response states that “none of the parties in this Docket have been given the opportunity to work with the Company regarding the Draft Order.” (Staff’s Response at 8.) Staff suggests a variation of this point lower on the same page, noting that, “In Staff’s view, developing an acceptable schedule of compliance will require some time *either through*

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agreement of the parties or by Commission resolution.” (*Id.* (emphasis added).) The plain meaning of the first statement and the implication of the second statement is that Just Energy has refused to engage in a dialogue with Staff to attempt to reach resolution of contested issues.

That characterization is incorrect. Just Energy has made several requests to Staff, including requests since the filing of Staff’s Response, to engage with Staff in a constructive discussion to try to reach resolution of potentially contested issues as well as to address points of apparent agreement. In response to those requests, Staff has politely, but directly, indicated that it does not want to engage in discussions with Just Energy on those points until after some further action by the ALJ or the Commission. While Just Energy obviously cannot compel Staff to participate in informal discussions to explore points of agreement and resolution, it is unfair and inaccurate to say that parties have not been “given the opportunity to work with” Just Energy to try to resolve issues. (*Id.*) Certainly to the extent that the ALJ or the Commission wish to direct Just Energy and Staff to attempt to reach resolution through informal discussions, Just Energy has no objection to such a course.

Staff also repeatedly criticizes Just Energy’s Draft Proposed Order as “premature” (*See id.* at 8-9.) Just Energy objects to that characterization both procedurally and substantively. As a procedural matter, Just Energy filed its Draft Proposed Order consistent with the direction of the Administrative Law Judge. All interested parties have had an opportunity to respond to the Draft Proposed Order (though neither Staff nor CUB has presented an alternative Draft Proposed Order to which Just Energy could respond). Thus, the suggestion that anything was procedurally premature is unfounded.

Regarding the substantive timing, Staff notes: that (1) at the time of the filing of Just Energy’s Draft Proposed Order, the dispute about CUB’s access to the confidential portion of the

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Audit Report was unresolved; (2) the Draft Proposed Order does not address a schedule for implementation of the Audit Report's recommendations; and (3) Just Energy's Compliance Filing had not been "fully vetted." (*See id.*) These points are now moot: (1) CUB now has been provided with a copy of the confidential version of the Audit Report; (2) as discussed above, there is no need for a "schedule" for implementation of the Audit Report's recommendations because Just Energy is proceeding with implementation in accordance with the Audit Report's suggested implementation timeframes; and (3) both Staff and CUB have had the opportunity to fully respond to Just Energy's Compliance Filing such that it has been "fully vetted."

Finally, Staff derides Just Energy's Draft Proposed Order as "a document that serves only the interests of the Company." Just Energy takes exception to that statement: through its Compliance Filing and as reflected in the Draft Proposed Order, Just Energy has agreed in good faith to implement the Audit Report's recommendations and has foregone the opportunity to challenge even a single one of those recommendations. Consistent with that approach, and in accordance with the process laid out in the relevant Commission Orders, Just Energy's Draft Proposed Order accurately reflects the fact that because Just Energy has agreed to implement the recommendations, this proceeding *should be concluded as soon as possible*.

Notwithstanding the rhetoric, nothing in Staff's Response, and certainly nothing in CUB's Response, explains why Just Energy's position is fundamentally incorrect – in fact, it seems that at a fundamental level, Staff basically agrees with the position that the instant proceeding should be concluded expeditiously (though CUB obviously does not). To the extent that the Draft Proposed Order serves "the interests of the Company," neither Staff nor CUB has offered an alternative Draft Proposed Order, or other replacement or alternative language. Thus,

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Just Energy maintains its position that this matter should be concluded immediately, and if not immediately, as soon as reasonably possible.

REPLY TO CUB'S RESPONSE

1. CUB Seeks To Create A Dispute Where None Is Necessary

Given that CUB has been litigating this case for several years and is charged with acting in the best interests of Illinois consumers (*see* 220 ILCS 10/2), one might fairly expect that CUB's Response to Just Energy's decision *not* to contest the Audit Report's recommendations and *to agree to implement each and every one of those recommendations* might be met with at least a modicum of acceptance, if not a hint of faint praise. Unfortunately, that is not the case. CUB's Response comes out firing away at Just Energy's "sorely deficient" Compliance Filing that contains a "facial promise" to implement the Audit Report's recommendations, and moves on from there to a barrage of cherry picked criticisms and fantasy "facts." (CUB's Response at 1, 4-8.) It is quite apparent from CUB's Response that CUB's overriding goal is the perpetuation of this litigation, or perhaps spin off litigation, rather than reasonable and prudent resolution of the issues presented to the Commission as a result of Just Energy's agreement to implement the Audit Report's recommendations. Just Energy takes exception to CUB's tone and tactics, and urges the Commission to view CUB's approach as a transparent attempt to foment rather than resolve adversarial issues.

2. CUB Inappropriately Attacks Just Energy's Attempt To Maintain The Confidentiality Of Portions Of The Audit Report

Before even discussing the actual issues presented by Just Energy's Compliance Filing and Draft Proposed Order, CUB accuses Just Energy of causing "significant delay" as a result of exercising its right to seek to maintain the confidentiality of portions of the Audit Report. (CUB's Response at 5.) Just Energy objects to the implication that it delayed anything

inappropriately. Well *before* issuance of the Audit Report by the auditor, Just Energy expended substantial time, effort, and resources – operating under very tight time frames imposed by Staff and the Auditor – in communicating with the Auditor and Staff regarding confidentiality designations in the Audit Report. After the Audit Report’s filing on ICC e-Docket on January 3, 2012, Just Energy’s filings regarding confidentiality were all made in good faith and in a timely manner, consistent with the Commission’s Rules of Practice and the Rulings of the ALJ. CUB’s suggestion to the contrary is unfounded and inappropriately inflammatory. Indeed, as CUB concedes, once the Commission denied Just Energy’s Petition for Interlocutory Review on the confidentiality issue, Just Energy immediately – i.e., *within one hour of receiving the ALJ’s April 6, 2012 Order* – provided a confidential version of the Audit Report to CUB. (*See id.*)

3. CUB Cherry Picks A Few Items From The 168-Page Audit Report In An Attempt To Malign Just Energy

Rather than focus on Just Energy’s Compliance Filing or Draft Proposed Order, CUB cherry picks from the Audit Report in order to malign Just Energy. (*See CUB’s Response at 5-8.*) This exercise serves no useful purpose except to reveal CUB’s apparent ongoing efforts to prolong this litigation, or perhaps spawn new litigation. Just Energy acknowledges that the Audit Report contains some criticisms of Just Energy. This is not exactly earth-shaking news, in that the Audit Report contains 40 recommendations, *all* of which Just Energy agreed to implement as documented in a public filing over two months before the filing of CUB’s Response. Thus, CUB’s recitation of cherry-picked criticisms of Just Energy serves no useful purpose but to rehash (albeit in a highly selective and biased manner) some of the Audit Report’s findings and inflame the arguments.

In addition, a review of the statements that CUB cherry-picked from the Audit Report reveals that in most cases the criticisms are rather guarded, and often tempered by qualified and

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cautious language, suggesting that the Auditor itself was not particularly convinced that a substantial problem truly existed. For example:

- The very first item CUB quotes from Audit Report begins by noting that “improvements [in corporate oversight] have been made...” (CUB’s Response at 5, citing Audit Report at II-7.)
- In another example, CUB quotes a sentence of the Audit Report that characterizes a sales approach as “potentially” misleading, though there is no reference to any actual misleading conduct. (CUB Response at 6, citing Audit Report at III-17.)
- In another example, CUB quotes a passage observing that some Just Energy job postings may lack clarity (without explaining in any way how unclear job postings have anything to do with sales or marketing problems or customer confusion.) (See CUB’s Response at 6-7, citing Audit Report at IV-6.) Incredibly, however, CUB fails to quote a conclusion made on the exact same page of the Audit Report, which does directly relate to the prevention of marketing problems and customer confusion: “IC’s [Independent Contractors] are trained and clearly understand the following violations will lead to immediate termination.” (Audit Report at IV-6.)
- CUB quotes a passage about Just Energy’s orientation training stating, in part, “there was insufficient discussion and review of the importance of compliance requirements and the consequences of inappropriate behavior (*other than items for termination*).” (CUB’s Response at 7, citing Audit Report at IV-7 (emphasis added).) Here, respectfully, the Auditor’s point is somewhat vague, since the Auditor seems to be saying that on one hand there was not enough emphasis on consequences of inappropriate behavior while simultaneously on the other hand recognizing that the training focused appropriately on

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“items for termination.” Further, CUB omits any mention of the statement made on the same page recognizing that **“JE’s training materials appropriately discuss compliance requirements and the resulting discipline for non-compliance”** while recommending some additional classroom training. (Audit Report at IV-7 (emphasis added).)

- CUB quotes a short sentence indicating that a “Fixed Price Protection Program” brochure “did not comply with all requirements.” (CUB’s Response at 7, citing Audit Report at V-6.) This is a classic example of cherry picking a minor item out of the 168-page report. In fact, in the summary “Management Assessment” three pages later, the Audit Report concludes:

- **JE Illinois appropriately updates its promotional materials to reflect current products. In May 2011, JE Illinois introduced a new product, its JustGreen RateFlex Program. Brochures and materials were updated to reflect the new product.**
- **NorthStar’s audit uncovered no evidence that JE unapproved materials were being used in door-to-door solicitations.**
 - **NorthStar personnel observed only the use of authorized materials in the field.**
 - **As part of his field shadowing, the QAFS [Qualified Assurance Field Specialist] checks to make sure the ICs are carrying the current, approved materials.**

(Audit Report at V-9 (emphasis added).)

The point is that CUB has quite clearly cherry picked a few items out of 168 pages for no purpose other than to malign Just Energy.

4. CUB’s Discussion Of “Complaint” Statistics Is Highly Misleading

CUB’s most egregious and misleading statements relate to “complaint” statistics. Here, CUB relies on data in the Audit Report referring to “complaints” without providing any context or explanation for what that number represents, and then compares that number with the total number of actual Just Energy customers, and concludes a percentage for “Just Energy’s internal

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complaints compared to total customers.” (CUB’s Response at 6.) CUB’s methodology here is transparently misleading.

First, the term “complaint” suggests wrongdoing on Just Energy’s part. Critically, however, CUB fails to appreciate that Just Energy radically changed its system of recording and categorizing calls into Just Energy’s customer service center in response to the requirement to provide daily and monthly complaint reports to Staff. The vast majority of customer contacts are classified as “complaints” for reporting purposes to Staff and for purposes of the raw numbers used by the auditor. Thus, those “complaints” relate to all aspects of Just Energy’s interactions with customers, including questions and inquiries that have nothing to do with a “complaint” in the sense of any alleged company wrongdoing.

For example, a call from a customer expressing dissatisfaction with a utility meter read would be included in the complaint report (even though it has nothing to do with any act or omission of Just Energy). Similarly, a call into the call center in which a customer states that he believes his bill is too high in a peak winter month (a common call for gas utilities) is categorized as a complaint and included in the daily and monthly complaint numbers that are referenced in the Audit Report. Further, calls into the call center from persons who are not even Just Energy customers can be categorized as a complaint for reporting purposes. In fact, the vast majority of “complaints” referenced in the Audit Report and included in the daily and monthly complaint reports having nothing to do with the door-to-door sales channel, which, under the direction of the Commission in the Final Order in Docket No. 08-0175, was to be the focus of the audit. (*See* April 13, 2010 Order in ICC Docket No. 08-0175 at 49 (“Because the allegations in this matter have been limited to conduct associated with door-to-door marketing, the corrective measures we impose below are correspondingly limited.”).) As the information on page IX-2 of

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the Audit Report indicates, of the number of “complaints” that CUB is apparently using for its calculation, only about ****REDACTED**** were actually related to sales or independent contractor issues, which is the very focus of the audit. (*See* Audit Report at IX-2.)

Further, a comparison of total number of “complaints” (involving both actual customers and persons who never became actual customers) against a total number of actual customers will result in a skewed percentage. Common sense dictates that any company that markets directly to potential customers actually signs up only a very small percentage of such potential customers. In other words, the universe of potential customers with whom a company comes into contact will be orders of magnitude higher than actual customers. Thus, comparing total “complaints” from all potential customers with whom Just Energy had contact in a given period with actual customers of Just Energy during that period is an exercise in apples-to-oranges analysis.

Yet, CUB summarily runs its incorrect numbers and then accuses Just Energy of “alarmingly high” internal complaint volumes. That analysis is unpersuasive and a manipulation of the Audit Report’s information. In fact, as indicated above, the data compiled by the Commission itself over several years indicates sustained and significant lowering of complaints associated with Just Energy. Thus, CUB’s statement that Just Energy’s efforts “have not resulted in a substantial reduction to [sic] customer complaints and are therefore either not being implemented effectively or are simply insufficient” lacks credibility and should be disregarded. CUB’s attempt to distort complaint numbers in an attempt to prolong this litigation about an audit that has been completed and with which Just Energy has agreed to comply should be rejected out of hand.

5. CUB's Proposed Procedure Regarding Implementation Of The Audit Report's Recommendations Is A Transparent Attempt To Generate Further Litigation

CUB's Response segues from its cherry picked items from the Audit Report and mischaracterization of complaint statistics into a set of unnecessary and unreasonable suggestions for continuing this proceeding indefinitely. (*See* CUB's Response at 11.) In addition to seeking implementation of the Audit Report's recommendations "within the recommended implementation timeframes" -- to which Just Energy has already agreed -- CUB also seeks submission of an Implementation Plan, periodic compliance filings, periodic status hearings, an Interim Order, and status hearings. (*See id.*) As discussed in the introduction and the discussion of certain Staff recommendations above, there is no basis in any of the Commission Orders in this or the underlying proceeding to justify such a complicated set of procedures, and frankly even if there were some theoretical basis for it in one or more of those Orders, the facts as they exist now do not justify those measures. Just Energy has agreed to implement the Audit Report's recommendations on the schedule set by the auditor. CUB's suggestions should be rejected.

6. CUB's Criticism of Just Energy's Draft Proposed Order Is Unfounded

CUB accuses Just Energy of attempting to "unilaterally determine what concludes this proceeding" and then quotes Staff that "the Company does not determine when a docket is closed." (CUB's Response at 12.) Just Energy has not "unilaterally" attempted anything, and Just Energy is fully respectful of the Commission's role in determining the progress of the docket -- Just Energy has never suggested otherwise. All Just Energy has done is submit a Draft *Proposed* Order -- consistent with the instruction from the ALJ. That Draft Proposed Order recognizes the unremarkable fact that under the express language of the Commission's prior

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Orders in this and the underlying docket, two courses of action are possible: (1) Just Energy challenges the Audit Report's recommendations and a new docket and new litigation ensues, or (2) Just Energy agrees to implement the Audit Report's recommendations, which concludes the matter. Just Energy's Draft Proposed Order recognizes the fact that Just Energy has followed the second course, the result of which is that the matter should be concluded.

CUB's Response actually quotes the relevant language:

[u]nless [Just Energy] voluntarily agrees to implement the audit's recommendations, a docket shall be promptly opened to review the audit's recommendations and [Just Energy's] responses and enter an appropriate implementation Order.

(CUB's Response at 12, quoting the Commission's April 13, 2010 Order in ICC Docket No. 08-0175 at 50.) CUB then makes the accusation that Just Energy "apparently interprets this sentence as limiting the Commission's jurisdiction over this matter, and restricting the Commission from ensuring its own Order in Docket No. 08-0175 is fully complied with." (CUB's Response at 12.) On the contrary, Just Energy does not apply any "interpretation" to the Commission's ordering statement – Just Energy is guided by the plain language that the Commission used, which makes it clear that the path of voluntary implementation of the Audit Report's recommendations would *not* mean the invitation to further litigation that CUB plainly desires.

Just Energy's position here is fully compliant with the Commission's relevant Orders -- and the language of those Orders was not accidental or haphazard. A review of the relevant filings in Docket No. 08-0175 confirms that the Commission's language regarding the process that would ensue after issuance of the Audit Report -- the process that, with limited exceptions, was basically adopted in whole in the instant proceeding's Initiating Order -- was intentional and was thoroughly vetted. In fact, in their Briefs on Exceptions to ALJ Gilbert's Proposed Order in

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Docket 08-0175, both the Commission Staff and CUB discussed and provided specific suggested language modifications to the section of the Proposed Order relating to the audit process, including how the Audit Report would be dealt with after issuance. (*See* ICC Docket No. 08-0175, Jan. 25, 2010 Brief on Exceptions of Staff at 8-10; Jan. 25, 2010 CUB/AARP Brief on Exceptions at 15-16.)

The Commission's Final Order made extensive substantive changes to the ALJ's Proposed Order regarding the audit. (*Compare* ICC Docket No. 08-0175 Jan. 11, 2010 Proposed Order at 51-52 *with* April 13, 2010 Final Order at 49-50.) Thus, the process endorsed by the Commission's Final Order in Docket No. 08-0175 and largely adopted by the Initiating Order in this proceeding was not accidental. Just Energy has followed that process by agreeing to implement the Audit Report's recommendations. Now that Just Energy has made its decision based upon the structure previously articulated by the Commission, it would be inappropriate for the Commission to change that structure.

CUB's final thrust at Just Energy is equally unfounded. CUB accuses Just Energy of ignoring a sentence in the Commission's Order in 08-0175 in which the Commission recognized that if Just Energy failed to follow the Audit Report's recommendations, the Commission could make use of its enforcement authority. (*See* CUB's Response at 12-13.) In an clear non sequitor, CUB states: "This language, in fact, suggests that the Commission must affirmatively review and approve of [sic] the recommendations in the Audit Report and ensure each is implemented timely and effectively." (*Id.* at 13.) Plainly, the sentence from the Commission Order upon which CUB relies has no such meaning – it contains no suggestion that the Commission will "review" each recommendation or "approve" each recommendation or take any other similar action. If the Commission had had any intent to do that, the Commission Order

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would not have permitted Just Energy with the opportunity to choose to voluntarily implement the Audit Report's recommendations.

In any event, neither CUB nor the Commission Staff has made even a single allegation that even one of the recommendations in the Audit Report is inappropriate, insufficient, or otherwise wrong, so CUB's point about theoretical Commission review and approval of those recommendations seems highly speculative.

Finally, CUB criticizes Just Energy's Draft Proposed Order for several perceived inadequacies, such as a lack of "the entire case history of this docket." (CUB's Response at 13.) With due respect, CUB has had many weeks since Just Energy presented its Draft Proposed Order to present an alternative Draft Proposed Order. Without explanation, CUB has declined to provide such an alternative document. CUB apparently seeks to have the Order in this docket rehash the history of Docket No. 08-0175, an exercise that is totally unnecessary for purposes of concluding this matter. The case history of Docket No. 08-0175 is included in the Final Order in that proceeding and repetition of that in a Final Order in this docket is neither necessary nor appropriate.

In summary, CUB seems more interested in perpetuating this litigation rather than acknowledging Just Energy's good faith decision to implement the Audit Report's recommendations in an attempt to both comply with the Commission's previously stated preference and bring this matter to a close. The Commission ought not credit CUB's unproductive approach.

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CONCLUSION

Just Energy appreciates and agrees with Staff's recommendation to convert the daily complaint reporting requirement to a monthly requirement, and also appreciates and agrees with Staff's suggestion for the path to terminating the monthly complaint report and quarterly cancellation reporting. Just Energy has agreed to implement the Audit Report's recommendations, and is doing so on the schedule set forth in the Audit Report using February 1, 2012 as the implementation start date. Just Energy is also agreeable to providing Staff with periodic progress reports, providing within ten (10) business days after each respective implementation timeframe set forth in the Audit Report, using February 1, 2012 as the implementation start date.

For the reasons stated herein, Just Energy does not agree with the additional obligations and requirements suggested by Staff and CUB – which are not reasonably based on the Ordering language that the Commission adopted in this and the underlying proceedings – and particularly objects to CUB's mischaracterization of the Audit Report.

Accordingly, for the reasons stated, Just Energy respectfully requests entry of the Draft Proposed Order filed by Just Energy on February 14, 2012, modified to incorporate the additional agreed upon items noted. Just Energy further requests the right to review and, if necessary, submit Exceptions and/or Reply Exceptions to any Proposed Order prepared by the Administrative Law Judge prior to final consideration by the Commission.

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Respectfully submitted,

JUST ENERGY ILLINOIS CORP.

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COUNTY OF _____)
) SS
ONTARIO, CANADA)

VERIFICATION

Gord Potter, being first duly sworn, on oath deposes and says that he is the Executive Vice President for Legal & Regulatory Affairs for Just Energy Illinois Corp., that he has read the above and foregoing document, knows of the contents thereof, and that the same is true to the best of his knowledge, information and belief.

Gord Potter

Subscribed and sworn to me
this _____ day of May, 2012.
